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SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

No. _____
Vancouver Registry

AUG 19 2022



IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, C. C-36, AS AMENDED

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, C. 57, AS AMENDED AND THE *BUSINESS
CORPORATIONS ACT*, S.N.B. 1981, C. B-9.1, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF TREVALI MINING
CORPORATION AND TREVALI MINING (NEW BRUNSWICK) LTD.

PETITIONERS

PETITION TO THE COURT

ON NOTICE TO: The Bank of Nova Scotia, in its capacity as the RC Facility Administrative Agent
(as defined herein)

This proceeding is brought by the Petitioners for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must

- (a) file a Response to Petition in Form 67 in the above-named Registry of this Court within the time for Response to Petition described below, and
- (b) serve on the Petitioners
 - (i) 2 copies of the filed Response to Petition, and
 - (ii) 2 copies of each filed Affidavit on which you intend to rely at the hearing

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the Response to Petition within the time for response.

Time for Response To Petition

A Response to Petition must be filed and served on the Petitioners,

- (a) if you were served with the Petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is: 800 Smithe Street, Vancouver, British Columbia
(2)	The ADDRESS FOR SERVICE of the Petitioners is: Blake, Cassels & Graydon LLP Barristers & Solicitors Suite 2600, Three Bentall Centre 595 Burrard Street Vancouver, BC V7X 1L3 Attention: Peter L. Rubin/Peter Bychawski/ Claire Hildebrand/Alison Burns
	E-mail address for service of the Petitioners: Vancouver.service@blakes.com ; peter.rubin@blakes.com ; peter.bychawski@blakes.com ; claire.hildebrand@blakes.com ; alison.burns@blakes.com
(3)	The name and office address of the Petitioners' lawyer is: Blake, Cassels & Graydon LLP Barristers & Solicitors Suite 2600, Three Bentall Centre 595 Burrard Street Vancouver, BC V7X 1L3 Attention: Peter L. Rubin/Peter Bychawski/ Claire Hildebrand/Alison Burns

CLAIM OF THE PETITIONERS

Part 1: ORDERS SOUGHT

1. The petitioners, Trevali Mining Corporation ("**Trevali Corp.**") and Trevali Mining (New Brunswick) Ltd. ("**Trevali NB**" and together with Trevali Corp., the "**Petitioners**") seek an initial order under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("**CCAA**") substantially in the form attached as Schedule "A" (the "**Initial Order**") to this Petition, among other things:

- (a) declaring that the Petitioners are companies to which the CCAA applies;

- (b) appointing FTI Consulting Canada Inc. ("**FTI**") as an officer of this Court to monitor the assets, business, and affairs of the Petitioners (in such capacity, the "**Monitor**");
- (c) an order that, until further order of this Court, all proceedings against the Petitioners and their directors and officers be stayed;
- (d) authorizing the Petitioners to continue to utilize the central cash management system currently in place as described in the Creaney Affidavit (as defined below) or replace it with another substantially similar central cash management system (the "**Cash Management System**");
- (e) authorizing the Petitioners to make payment of certain pre-filing amounts or to honor cheques issued to providers of goods and services prior to the date of the Initial Order that the Petitioners, in consultation and with the consent of the Monitor, consider to be necessary to facilitate the Petitioners' ongoing operations and to preserve value in these CCAA proceedings;
- (f) an order granting the following charges over the assets, properties, and undertakings of the Petitioners as security for the obligations of the Petitioners to the beneficiaries of such charges, in each case as set out in the Initial Order, and having the following relative priorities as among such charges:
 - (i) First, an "**Administration Charge**" as security for the respective fees and disbursements incurred by the Monitor, counsel to the Monitor, and counsel to the Petitioners at the standard rates and charges of the Monitor and such counsel, both before and after the making of the Initial Order, which are related to the Petitioners' restructuring.;
 - (ii) Second, a "**D&O Charge**" as security for the Petitioners' obligation pursuant to the Initial Order to indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Petitioners after the commencement of the within proceedings, except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct; and

- (iii) Third, an “**Intercompany Advances Charge**” as security for any Intercompany Advances (as defined in the Initial Order) made in the context of these CCAA proceedings pursuant to the Initial Order; and
- (g) such further and other orders as this Honourable Court may deem just and convenient and as may be appropriate in the circumstances.

Part 2: FACTUAL BASIS

Capitalized Terms and Currency References

2. Trevali Corp., the one hundred (100) percent owner of Trevali NB, is also the ultimate “parent” company of several other corporate entities incorporated in Canada, the United Kingdom, Namibia, Burkina Faso, and Bermuda.

3. Trevali Corp. together with its direct and indirect subsidiaries, including Trevali NB, shall be referred to in this Petition as “**Trevali**”, consistent with the company’s financial reporting practices.

4. Additional capitalized terms used but not otherwise defined in this Petition have the meanings given to them in Affidavit #1 of Brendan Creaney, made August 19, 2022 (the “**Creaney Affidavit**”).

5. All references to monetary amounts in this affidavit are in United States dollars, Trevali’s functional currency, unless otherwise stated.

Overview

6. Trevali is a global public base-metals mining company focused on the exploration, development, operation, and optimization of mining properties in Canada, Burkina Faso, and Namibia. The company’s principal product is zinc, which generates approximately 90% of Trevali’s revenue, but the company’s operations also produce lead and silver.

7. The bulk of Trevali’s revenue is generated from three mines:

Mining Property	Location	Trevali Ownership Interest
“ Perkoa Mine ”	Burkina Faso, West Africa	90%
“ Rosh Pinah Mine ”	Namibia, South Africa	90%
“ Caribou Mine ”	New Brunswick, Canada	100%

8. Each of the Perkoa and Rosh Pinah Mines are producing mines with long histories of operation and have historically been profitable.

9. The Caribou Mine also has a long history of operation, though production has recently been suspended considering the current economic situation facing the mine, as discussed below.

10. Revenues from concentrate sales at the Perkoa, Rosh Pinah, and Caribou Mines (as well as the previously owned Santander Mine in Peru, which was disposed of in December 2021) (after smelting and refining costs) for the year ended December 31, 2021 totalled \$343.6 million.

11. Although the performance of the Rosh Pinah Mine continues to be consistent, Trevali has seen a drastic and disruptive deterioration of its financial situation in 2022, including because of a tragic flooding event at its Perkoa Mine in Burkina Faso and material challenges at the Caribou Mine.

12. Intense and unseasonal rainfall on April 16, 2022, near Trevali's Perkoa Mine, created a flash flood that entered the mine site and breached the mine's safety controls, flooding the underground mine and preventing eight (8) workers from evacuating the mine. The resulting impacts on Trevali's workforce and the mine were catastrophic. Most tragically, the bodies of all eight (8) of the workers who had been trapped in the mine were recovered in May and June after extensive search and recovery efforts.

13. Apart from the tragic loss of human life, which is irreparable, and significant physical impacts at the Perkoa Mine site, requiring the removal of more than 165 million litres of water and more than 9,000 cubic metres of solids from the mine, the Perkoa Mine flood has had a significantly negative impact on Trevali's financial health in the second quarter of 2022, including:

- (a) the need to incur more than \$15 million of direct and indirect costs between April 16 and June 30, 2022 related to dewatering efforts, infrastructure refurbishment, and construction linked to repairs and rehabilitation at the Perkoa Mine. Estimated additional costs of more than \$10 million related to the flooding event have been incurred subsequent to June 30, 2022, and continue to be incurred;
- (b) the cessation of all operations at the Perkoa Mine for more than four (4) months starting on April 16, 2022 and a corresponding second quarter decrease in payable

zinc production from the Perkoa Mine of over eighty (80) percent compared to the prior quarter;

- (c) a forty-four (44) percent decrease in Trevali's revenues at the Perkoa Mine compared to the prior quarter; and
- (d) a seventy-eight (78) percent decrease in Trevali's earnings before interest, taxes, depreciation, and amortization (EBITDA) attributable to the Perkoa Mine compared to the prior quarter.

14. Given these circumstances, site operations and operating cost and production guidance at the Perkoa Mine were and remain suspended.

15. The financial and operating stress that the flood at the Perkoa Mine has placed on Trevali has also indirectly limited the company's ability to address recent operational and financial challenges facing the Caribou Mine, which has historically depended on intercompany funding from Trevali Corp. to sustain its operations and is presently operating at a loss.

16. In addition to challenges caused by global inflationary impacts facing the mining industry, the production performance at the Caribou Mine has been significantly and negatively impacted following continued operational issues due to low equipment availability and productivity rates with Trevali NB's mining contractor, among other factors, resulting in lower production results and higher costs.

17. Adjusted EBITDA for Trevali NB (the direct owner of the Caribou Mine) in the second quarter of 2022 decreased by one hundred and eighteen (118) percent compared to the prior quarter due to an increase in mine operating costs related to higher mining and maintenance, consultant costs, and the inflationary impact on fuel, power, and other logistics costs.

18. Under present conditions, the cost to produce one pound of payable zinc concentrate at the Caribou Mine plus the capital sustaining costs to maintain the mine and mill was \$1.01 in the second quarter of 2021 and by the second quarter of 2022 had increased to \$2.20.

19. On August 8, 2022, Trevali NB's contract miner at the Caribou Mine issued a notice of default under its mine operation contract with Trevali NB in which it advised that if overdue invoices issued by the contract miner totalling approximately CDN \$3.5 million were not settled on or before August 17, 2022, the contract miner reserved its right to draw on letters of credit in

the amount of \$2.5 million that were provided as security for Trevali NB's obligations, terminate the contract pursuant to which it is responsible for the operation of the Caribou Mine, and take other steps that may be available to it under applicable law.

20. Trevali NB has also received indications from several critical suppliers regarding their reluctance to continue to supply under these circumstances without some reduction in outstanding accounts. As a result of this and the other factors noted above, effective August 15, 2022, Trevali NB suspended production work at the Caribou Mine, and intends to transition toward a care and maintenance program. Trevali NB's full-year production and cost guidance for the Caribou Mine has also been suspended and the operation is under review.

21. Due to the circumstances described above, while the company's operations at the Rosh Pinah Mine have remained consistent, Trevali is facing significant financial and liquidity challenges attributable primarily to the suspension of operations at the Perkoa Mine and the Caribou Mine's operational underperformance.

22. Trevali's 2022 second quarter revenues have decreased forty-four (44) percent over the prior quarter. Trevali's net loss of income for the second quarter of 2022 was approximately \$62 million compared to a positive net income in the corresponding period of 2021. Trevali's market capitalization has reduced by more than seventy-five (75) percent from approximately CDN \$187 million on April 14, 2022 (immediately prior to the Perkoa Mine flood) to CDN \$20.4 million as of August 18, 2022.

23. Given their present financial circumstances, as described above, the Petitioners are in a situation such that, among other things:

- (a) Trevali NB is not able to meet its financial obligations with respect to the Caribou Mine generally as they become due including approximately \$15 million in accounts payable plus accruals currently owing to Trevali NB's mining contractor and other critical service providers at the Caribou Mine;
- (b) Trevali Corp. has not been able to make its scheduled pending mandatory prepayment of approximately \$7.5 million due under its senior secured revolving credit facility that was due on August 17, 2022; and

- (c) Trevali Corp. is unable to meet its scheduled pending obligations to pay out its senior secured revolving facility defined below as the “RC Facility” (in the approximate amount of \$84.5 million) and/or its second ranking secured loan defined below as the “Glencore Facility” (in the approximate amount of \$13 million) when they mature in September 2022.

24. In the circumstances, given their present financial and liquidity challenges, the Petitioners urgently require a stay of proceedings under the CCAA to maintain the status quo and obtain the breathing room required to consider strategic restructuring alternatives and pursue and implement a restructuring strategy.

25. Notwithstanding the Petitioners’ present challenges, Trevali’s management believes that the company has a viable business whose value can be stabilized and maximized with the benefit of the protections afforded by the CCAA.

26. The overall value of the Petitioners’ business will likely be enhanced to the benefit of their stakeholders through a restructuring under the CCAA as compared to a forced liquidation scenario.

Business Organization and Management

27. While Trevali’s business operations in New Brunswick, Burkina Faso, and Namibia are in part carried out through locally based subsidiaries of Trevali Corp., primarily for reasons having to do with local laws, Trevali operates its business on an integrated basis with Trevali Corp.’s Vancouver office serving as the corporate “nerve centre” for Trevali as a whole.

28. Trevali’s operations at the Perkoa, Rosh Pinah, and Caribou Mines are supported by the following number of employees and contractors:

Location	Employees	Contractors
Head Office (Vancouver)	44 (including some personnel in Stellenbosch, South Africa, as noted below)	3
Caribou Mine (New Brunswick)	121	165
Perkoa Mine (Burkina Faso)	313	360
Rosh Pinah Mine (Namibia)	404	238
TOTAL	882	765

29. The employment of sixty four (64) of Trevali NB's employees at the Caribou Mine is subject to a collective agreement.

30. All key head office functions for each Trevali entity, including key operational, strategic, and legal decision-making, cash-management, human resources, sales and pricing determinations, and related functions, as well as oversight of local payroll and accounting functions, are conducted for and on behalf of each member of the Trevali group primarily from the group's Vancouver headquarters (with some operating and technology functions also being based in the company's operations centre in Stellenbosch, South Africa). The sole director of Trevali NB is based in Vancouver.

The Glencore Off-Take Agreements and Secured Indebtedness

31. Trevali derives its revenues from the Perkoa, Rosh Pinah, and Caribou Mines from a single customer, Glencore International AG ("**Glencore AG**"), who either directly or through affiliated entities (collectively with Glencore AG, "**Glencore**") is the sole and exclusive purchaser of one hundred (100) percent of the concentrates produced from Trevali's current operations pursuant to "offtake" agreements. Glencore is also Trevali Corp.'s largest single shareholder, holding an approximately twenty six (26) percent interest in Trevali Corp.

32. While the pricing, payment terms, and delivery requirements of each of the offtake arrangements for each of Trevali's mines are unique, they collectively make Glencore the sole and exclusive purchaser of one hundred (100) percent of the concentrates produced from Trevali's current operations. Pursuant to an investor rights agreement Glencore also currently has a right of first refusal for future concentrate sales produced from any additional properties or assets that Trevali may acquire in the future.

33. On August 6, 2020, the Company entered into a second lien secured facility agreement with Glencore Canada Corporation up to a maximum of \$20.0 million (the "**Glencore Facility**").

34. The Glencore Facility was reduced by \$7.0 million in December 2020, because of the proceeds from Glencore's participation in an equity offering of Trevali Corp. being allocated to repay indebtedness under the Glencore Facility in accordance with the terms thereof. The amount available to Trevali under the Glencore Facility is nil as the full \$13.0 million limit under the agreement has been drawn. The Glencore Facility has a maturity date of September 18, 2022. Amounts outstanding under the Glencore Facility bear interest at a rate of LIBOR plus 5.5% .

35. To secure Trevali Corp.'s obligations under the Glencore Facility, Trevali Corp. and certain of its subsidiaries, including Trevali NB, granted a comprehensive security package that includes the grant of (a) a second ranking security interest in all Trevali Corp's and Trevali NB's present and future personal property pursuant to various general security agreements, debentures, and fixed and floating charges; (b) a second ranking security interest in certain of Trevali NB's real property pursuant to a mortgage; and (c) additional security throughout the Trevali organizational structure (as described in the Creaney Affidavit).

36. Pursuant to an intercreditor agreement between Glencore and the RCF Administrative Agent (as defined below), among other parties, Glencore and the RCF Administrative Agent agreed that the obligations to the RCF Lenders would have priority over and be senior in all respects and prior to any lien on the shared collateral securing the obligations under the Glencore Facility.

Trevali's Revolving Credit Facility and Secured Indebtedness

37. Pursuant to a second amended and restated credit agreement dated as of August 6, 2020, as amended by a first amending agreement dated December 29, 2020, a second amending agreement dated May 5, 2021, a third amending agreement dated September 28, 2021 and a fourth amending agreement dated November 19, 2021 (as further amended, restated, modified and supplemented from time to time, the "**RCF Credit Agreement**"), among Trevali Corp., as borrower, the lenders party thereto from time to time (the "**RCF Lenders**"), as lenders and The Bank of Nova Scotia, as the administrative agent for the benefit of the RCF Lenders (the "**RCF Administrative Agent**"), the RCF Lenders agreed to extend a \$150,000,000 revolving loan to Trevali Corp. on a senior secured basis (the "**RC Facility**").

38. The RCF Credit Agreement was amended and supplemented multiple times. The RC Facility was permanently reduced to \$111.9 million as at December 31, 2021, through mandatory repayments of \$16.3 million in 2021 and \$5.1 million in 2022. The RC Facility bears interest at a rate of LIBOR plus 5.5%, with commitment fees for the undrawn portion of the facility at 1.3%.

39. RC Facility draws totaling approximately \$84.5 million have been received by Trevali Corp., with a further \$4.4 million having been utilized for the purposes of obtaining letters of credit.

40. The RC Facility matures on September 18, 2022, with a mandatory prepayment of approximately \$7.5 million having been due on August 17, 2022 but not made.

41. To secure Trevali Corp.'s obligations under the RCF Credit Agreement, Trevali Corp. and certain of its subsidiaries, including Trevali NB, granted a comprehensive security package that includes the grant of (a) a first ranking security interest in all Trevali Corp's and Trevali NB's present and future personal property pursuant to various general security agreements, debentures, and fixed and floating charges; (b) a first ranking security interest in certain of Trevali NB's real property pursuant to a mortgage; and (c) additional security throughout the Trevali organizational structure (as described in the Creaney Affidavit).

Trevali's Past Restructuring Efforts

42. In September 2021, Trevali appointed a financial advisory firm to advise the company with the objective of providing a competitive non-equity financing solution for Trevali's proposed expansion of operations at the Rosh Pinah Mine (referred to as the "RP2.0" project) and the refinancing of both the RC Facility and the Glencore Facility.

43. In January 2022, Trevali formally announced through a press release that it was working toward securing project financing for the RP2.0 and that, in parallel, an early works program had commenced for RP2.0.

44. In March 2022, Trevali formed a "Special Committee" consisting entirely of independent directors unaffiliated with Glencore to examine the financing transactions contemplated by RP2.0 project (the "**RP2.0 Financing**") which at the time were contemplated to include a comprehensive financing package totalling approximately \$200 million and consisting of project financing, a stream agreement, an investor rights agreement with a prospective purchaser of equity in Trevali, a revised or replaced revolving credit facility, and a convertible debenture to be negotiated with one or more third parties as well as a loan agreement with Glencore AG or an affiliate thereof.

45. Because of the flooding event at the Perkoa Mine on April 16, 2022, the amount of the RP2.0 Financing package and timing of completion became subject to a higher level of uncertainty and the \$200 million target amount could no longer be relied upon. Notwithstanding these challenges and uncertainties, Trevali continued to work on the RP2.0 Financing and was ultimately able to secure and execute a mandate agreement with Standard Bank of Namibia Limited and The Standard Bank of South Africa Limited ("**Standard Bank**") to arrange a senior secured project finance facility of up to \$110 million (the "**Mandate Agreement**"). The Mandate Agreement sets out an exclusive arrangement with the Standard Bank describing the activities needed to arrange a senior secured financing facility (the "**RP2.0 Loan Facility**") for the RP2.0

project. On August 16, 2022, Standard Bank delivered a letter confirming that internal credit approval had been obtained for the project finance facility.

46. In addition to the Mandate Agreement, Trevali received non-binding expressions of interest from streaming and royalty companies in the order of \$40 million to \$50 million, and mining-focused alternative lenders, as well as from Glencore. Glencore specifically indicated its support for the RP2.0 project by proposing an aggregate \$33 million financing package, which could include an extension to the existing Glencore Facility of \$13 million, subordinated to traditional project finance debt and contingent on the remainder of the required financing package being secured as well as negotiation of satisfactory terms and conditions.

47. In May 2022, Trevali engaged a leading Canadian investment bank to assist the company in the undertaking of a strategic review process to solicit proposals for a broad range of transaction alternatives including a potential investment in Trevali and the potential sale of all or part of the business and assets of Trevali (the “**Strategic Review Process**”).

48. Ultimately, notwithstanding Trevali’s receipt of credit approval from the Standard Bank for the \$110 million RP2.0 Loan Facility, the RP2.0 Financing has not sufficiently advanced in a manner that will allow for the refinancing to be completed prior to the maturity of the RC Facility and Glencore Facilities. Additionally, as noted above, because of the flooding event at the Perkoa Mine, the previously announced targeted financing amount of \$200 million could no longer be relied upon and the total financing target was suspended as of May 16, 2022. In addition, as noted above, operations at the Caribou Mine are under review. Accordingly, the financing requirement is expected to exceed the previously targeted financing amount of \$200 million.

49. Similarly, notwithstanding the receipt of expressions of interest through the Strategic Review Process, there can be no assurance that the Strategic Review Process will progress in a fashion that will allow for the culmination of a transaction in a timely manner or sufficient value to refinance the RC Facility and Glencore Facilities.

The Need for Creditor Protection and the Petitioners’ Restructuring Plan

50. In the circumstances, given their present financial and liquidity challenges, the Petitioners urgently require a stay of proceedings under the CCAA to maintain the status quo and obtain the breathing room required to consider strategic restructuring alternatives and pursue and implement a restructuring strategy.

51. To protect against such negative effects and to address the company's current financial difficulties and liquidity challenges, the Petitioners' current plan while under CCAA protection involves, among other things, efforts to:

- (a) use the breathing room provided by the stay of proceedings against the Petitioners to focus the company's efforts on the stabilization of operations at the Caribou Mine as well as at the Perkoa Mine and the Rosh Pina Mine in Africa;
- (b) provide comfort to Trevali's stakeholders, both in Canada and in Africa, of the company's ability to continue operating as a going concern or otherwise preserve value;
- (c) consider, evaluate, and potentially pursue the Strategic Review Process;
- (d) manage the Petitioners' liquidity challenges and explore potential cost-cutting measures;
- (e) undertake a sale and investment solicitation process, or other process, to maximize the value of the Petitioners' business and property for the benefit of stakeholders; and
- (f) consult with key stakeholders.

52. While the Petitioners are currently in a challenging financial position, Trevali's management believes that taking steps to preserve the going concern value of the Petitioners' business under the protection of the CCAA as restructuring options are pursued will likely achieve a better long-term result for the Petitioners' stakeholders than a forced liquidation of the Petitioners' assets.

Part 3: LEGAL BASIS

Applicable Legislation

53. The Petitioners rely on the:

- (a) *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;
- (b) *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**");

- (c) *Business Corporations Act*, S.B.C. 2002, c. 57;
- (d) *Business Corporations Act*, S.N.B. 1981, c. B- 9.1;
- (e) inherent jurisdiction of this Honourable Court; and
- (f) such further and other legal basis as counsel may advise and this Honourable Court may allow.

The Remedial Purpose of the CCAA

54. The CCAA is remedial legislation, affording Canadian courts with broad jurisdiction to approve and implement restructuring arrangements:

The legislation is remedial in the purest sense in that it provides a means whereby the devastating social and economic effects of bankruptcy or creditor initiated termination of ongoing business operations can be avoided while a court-supervised attempt to reorganize the financial affairs of the debtor company is made.

Century Services Inc. v. Canada (Attorney General),
2010 SCC 60 at para. 59 [**Century Services**].

55. The Petitioners submit that the granting of the Initial Order would further the objective of the CCAA.

56. With the benefit of the protection afforded by the CCAA, the Petitioners will be able to maintain the value of Trevali' assets, and generally stabilize Trevali's business operations for the continued benefit of their stakeholders as restructuring alternatives are considered by Trevali.

57. In the absence of the granting of the relief sought by the Petitioners, including the imposition of a stay of proceedings, there is the risk that the Petitioners' significant and complex operations in Canada and Africa would be disrupted. The potential effects of such disruption could put at risk the well-being of the environment surrounding Trevali's mining operations and the local communities who directly or indirectly depend on their continued operations.

The CCAA Applies to the Petitioners

58. The CCAA applies in respect of a "debtor company" or "affiliated debtor companies" where the total amount of claims against the debtor or its affiliates exceeds five (5) million dollars. The

term “debtor company” is defined in Section 2 of the CCAA to include any company that is “insolvent.”

CCAA, ss. 2(1) and 3(1).

59. The Petitioners are each “companies” incorporated under the laws of British Columbia or New Brunswick. Trevali Corp. is the parent company of Trevali NB and, accordingly, the Petitioners are affiliated debtor companies pursuant to Section 3(2) of the CCAA.

60. The claims against each of the Petitioners exceed the CCAA’s statutory \$5 million threshold, with aggregate claims against the Petitioners exceeding \$100 million.

CCAA, ss. 2(1) and 3(2).

61. Although the term “insolvent” is not defined in the CCAA, Canadian courts have applied the BIA definition of “insolvent “person” for the purposes of assessing entitlement to apply for relief under the CCAA, which term includes persons who are for any reason unable to meet their obligations as they generally become due. Courts have interpreted this test expansively to include a company that “is reasonably expected to run out of liquidity within reasonable proximity of time as compared with the time reasonably required to implement a restructuring”.

Re Stelco Inc., 2004 CarswellOnt 1211 at paras. 21-22, 26 and 28, [2004] OJ No 1257 (Ont Sup Ct), leave to appeal to Ont CA refused, 2004 CarswellOnt 2936, leave to appeal to SCC refused, 2004 CarswellOnt 5200.

62. The Petitioners are each insolvent on these tests.

63. The Caribou Mine is operating at a loss. Trevali NB is unable to meet its financial obligations with respect to the Caribou Mine generally as they become due, including approximately \$15 million in accounts payable currently owing to Trevali NB’s mining contractor and other critical service providers at the Caribou Mine. Absent a stay of proceedings under the CCAA, the evidence is that Trevali NB’s financial circumstances will likely further deteriorate.

64. Trevali Corp. has been unable to meet its mandatory prepayment of approximately \$7.5 million due under the RC Facility and is not in a position to pay out the RC Facility and/or the Glencore Facility when they mature in September 2022.

This Court Has the Jurisdiction to Receive the Petitioners' Application for CCAA Protection

65. Section 9(2) of the CCAA provides that any application under the CCAA may be made to the court that has jurisdiction in the province within which the "head office" or "chief place of business" of the company in Canada is situated.

66. Trevali's head office and chief place of business for the purposes of the CCAA are within the jurisdiction of this Court.

67. While Trevali's business operations in New Brunswick, Burkina Faso, and Namibia are in part carried out through locally based subsidiaries of Trevali Corp., primarily for reasons having to do with local laws, Trevali operates its business on an integrated basis with Trevali Corp.'s Vancouver office serving as the corporate "nerve centre" for Trevali as a whole.

68. All key head office functions for each Trevali entity, including key operational, strategic, and legal decision-making, cash-management, human resources, sales and pricing determinations, and related functions, as well as oversight of local payroll and accounting functions, are conducted for and on behalf of each member of the Trevali group primarily from the group's Vancouver headquarters.

69. Pursuant to the "single control" model of insolvency proceedings it is a principle that all issues relating to a debtor's insolvency should be decided before a single court. The public interest favours a "single control" of insolvency proceedings by one court as opposed to their fragmentation among several courts.

Arrangement relatif à Bloom Lake, 2021 QCCS 3402, paras. 52 – 54.

70. The Petitioners submit that this Court has the jurisdiction and is the proper forum for the administration of these CCAA proceedings.

The Petitioners Have Satisfied the Statutory Filing Requirements

71. Section 10(2) of the CCAA provides that an initial application under the CCAA must be accompanied by:

- (a) a statement indicating, on a weekly basis, the projected cash flow of the debtor company;
- (b) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and
- (c) copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

72. Each of these conditions have been satisfied based on the evidence provided in the Creaney Affidavit.

The Requested Stay of Proceedings is Appropriate

73. Section 11.02(1) of the CCAA provides that a court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days, among other things, restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

74. A stay order under section 11.02(1) is the first step in all CCAA proceedings as it maintains the *status quo* while the debtor company consults with its creditors and stakeholders, allowing breathing room for reorganization.

Re JTI-Macdonald Corp., 2019 ONSC 1625 at para. 12.

75. Consistent with the purpose of the CCAA, a stay of proceedings facilitates the ongoing operations of the debtor company's business to preserve its value and prevents any creditor from gaining an unfair advantage over other creditors.

76. In the circumstances, given their present financial and liquidity challenges, the Petitioners urgently require a stay of proceedings under the CCAA to maintain the status quo and obtain the breathing room required to consider strategic restructuring alternatives and pursue and implement a restructuring strategy.

77. It is imperative for the success of any such strategy that current and potential actions against the Petitioners be stayed, that their current customer and supplier contracts and arrangements be preserved, and that the Petitioners be given authorizations under the CCAA relating to intercompany funding arrangements given their present liquidity position.

78. With the benefit of the protection afforded by the CCAA, the Petitioners will be able to maintain the value of the Petitioners' assets, and generally stabilize their business operations for the continued benefit of their stakeholders as restructuring alternatives are considered by Trevali.

79. As noted above, in the absence of the imposition of a stay of proceedings and the granting of other relief afforded by the CCAA, there is the risk that the Petitioners' significant and complex operations in Canada and Africa would be disrupted. The potential effects of such disruption could put at risk the well-being of the environment surrounding Trevali's mining operations and the local communities who directly or indirectly depend on their continued operations.

An Administration Charge is Appropriate

80. The Petitioners seek an Administration Charge for CDN \$500,000 to secure the collective fees and disbursements incurred both before and after the commencement of these proceedings of legal counsel for the Petitioners, the proposed Monitor, and legal counsel for the proposed Monitor.

81. Section 11.52 of the CCAA expressly provides the Court with the power to grant a charge in respect of professional fees and disbursements. In determining whether to grant an administration charge, Canadian courts have considered several factors including:

- (a) the size and the complexity of the business being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is an unwarranted duplication of roles
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the monitor.

CCAA, s. 11.52.
Mountain Equipment Co-Operative (Re), 2020
BCSC 2037 at para. 58.

82. Courts have recognized that, unless professional advisor fees are protected with the benefit of a charge over the assets of a debtor company, the objectives of the CCAA would be frustrated because professionals would be unlikely to risk offering their services without any assurance of ultimately being paid. Specifically, any failure to provide protection for professional fees will “result in the overwhelming likelihood that the CCAA proceedings would come to an abrupt halt, followed, in all likelihood, by bankruptcy proceedings”.

Re Timminco Ltd., 2012 ONSC 506 at para. 66.

83. The Petitioners require the specialized expertise, knowledge, and continuing participation of the proposed beneficiaries of the Administration Charge to complete the restructuring, and the Administration Charge is necessary to ensure their continued assistance and participation in these proceedings.

84. The Petitioners believe that an Administration Charge in the amount sought is fair and reasonable and will provide the level of appropriate protection for the payment of the Petitioners’ essential professional services given the size and complexity of the Petitioners’ business as described in this affidavit.

85. There will be no duplication of the roles of the beneficiaries of the Administration Charge. Each of these professionals will have a unique and distinct focus in the restructuring, and their joint efforts will produce a better result overall.

86. The proposed Monitor has reviewed the underlying assumptions upon which the Applicants have based the quantum of the proposed Administration Charge, the anticipated complexity of these CCAA proceedings, and the services to be provided by the beneficiaries of the Administration Charge, and is of the view that the proposed quantum of the Administration Charge is reasonable and appropriate in the circumstances.

The D&O Charge is Appropriate

87. Pursuant to section 11.51 of the CCAA, a court may make an order declaring that all or part of the property of the debtor company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify

the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

CCAA, s. 11.51.

88. The Petitioners seek a D&O Charge of CDN \$2 million Petitioners' obligation pursuant to the Initial Order to indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Petitioners after the commencement of the within proceedings.

89. The D&O Charge is vital to encouraging the continued participation of the Petitioners' directors and officers in these CCAA proceedings. The Petitioners' directors and officers will provide necessary experience and stability to the Petitioners' business and guide the Petitioners' restructuring efforts. It is critical that a level of continuity be maintained within the Petitioners to ensure focus on achieving a restructuring plan that will benefit the Petitioners' stakeholders.

90. Consistent with both the statutory requirements and the British Columbia Model CCAA Initial Order, the D&O Charge is not intended to duplicate coverage already in place under the Petitioners' existing directors' and officers' liability insurance policies, but rather, to supplement such coverage if any claim is not insured under those policies.

91. The amount of the D&O Charge may be reduced by the amount of severance and termination payments made by Trevali NB to those of its employees whose employment is terminated during these CCAA proceedings; provided, however, that the amount of the D&O Charge shall not be reduced on account of such payments by more than CDN \$1 million.

92. The proposed Monitor has reviewed the underlying assumptions upon which the Applicants have based the estimate of the potential liability in respect of directors' and officers' statutory obligations and is of the view that the D&O Charge is reasonable in relation to the quantum and estimated potential liability and appropriate in the circumstances.

The Intercompany Advances Charge is Appropriate

93. Trevali seeks a third-ranking Intercompany Advances Charge to secure intercompany advances that may be made in the context of these CCAA proceedings.

94. Such intercompany charges have been approved under the general power conferred by section 11 of the CCAA for courts to make such orders as they consider to be appropriate in order to protect the interests of separate creditor constituencies.

Performance Sports Group Ltd., Re, 2016 ONSC 6800 at paras. 34-35.

Walter Energy Canada Holdings Inc., Re, 2016 BCSC 107 at paras. 3, 62-67.

95. The Petitioners are of the view that such a charge is necessary and reasonable in the context of these CCAA proceedings.

96. Trevali's operations have historically been funded through intercompany advances in accordance with the company's centralized cash management practices. The Petitioners will continue to need to provide and/or receive some level of intercompany funding from time-to-time to and from their operating entities to preserve the value of their businesses pending the Petitioners' restructuring.

97. It is intended that such intercompany funding would occur with the approval of the proposed monitor and be consistent with the Petitioners' CCAA cash flow projections.

98. To protect the interests of their separate stakeholder constituencies, the Petitioners seek and require the granting of a charge to secure intercompany advances made during the CCAA process (the "**Intercompany Advances Charge**"). The Intercompany Advances Charge would only apply to funding provided after the commencement of these CCAA proceedings.

99. The proposed Monitor is of the view that the Intercompany Advances Charge is necessary and reasonable in the circumstances.

The Monitor

100. Section 11.7 of the CCAA provides that the court shall appoint a person to monitor the business and affairs of a debtor company granted relief under the CCAA.

101. Section 11.7 of the CCAA provides restrictions on who may be appointed as a monitor.

102. FTI is a licensed trustee within the meaning of section 2 of the BIA and is not subject to any of the restrictions on who may be appointed as monitor set out in section 11.7(2) of the CCAA it is qualified to act as Monitor in these CCAA proceedings.

The Form of the Initial Order is Appropriate in the Circumstances

103. In accordance with this Court's Practice Direction-47, the form of proposed Initial Order is based upon this Court's form of Model CCAA Initial Order and pursuant to section 11.02(1) of the CCAA seeks only such relief as is necessary in the circumstances.

104. The relief sought in the Initial Order is appropriate in the circumstances and within this Court's jurisdiction to grant pursuant to, among other provisions of the CCAA, section 11 as being appropriate in the circumstances.

Notice

105. Rule 8-5(6) provides that "[t]he court may make an order without notice in the case of urgency."

106. Section 11 of the CCAA further provides that:

...if an application is made under this Act in respect of a debtor Petitioner, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

107. The Initial Order is being sought on notice only to the RCF Administrative Agent.

108. The limited notice being provided with respect to this Petition is necessitated by the urgency of the Petitioners' need for the relief sought in the Petition and the fact that Trevali Corp. is a publicly traded company.

109. Provision of advance notice of the Petitioners' intention to seek the relief CCAA protection is impractical and could compromise the integrity of the public markets.

Part 4: MATERIALS TO BE RELIED ON

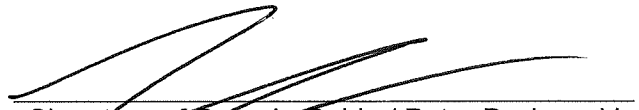
110. Affidavit #1 of Brendan Creaney, affirmed August 19, 2022;

111. Pre-filing Report of the Proposed Monitor dated August 19, 2022; and

112. Such further and other materials as counsel may advise and this Court may allow.

The Petitioners estimate that the hearing of the Petition will take two hours.

Date: August 19, 2022


Signature of Peter L. Rubin / Peter Bychawski
Lawyers for Trevali Mining Corporation and
Trevali Mining (New Brunswick) Ltd.

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of
this petition

with the following variations and additional terms:

.....
.....
.....

Date:[dd/mmm/yyyy].....

.....
Signature of Judge Master

SCHEDULE "A"

Initial Order

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C.
C-36

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, C. 57 AND
BUSINESS CORPORATIONS ACT, S.N.B. 1981, C. B-9.1

AND

IN THE MATTER OF TREVALI MINING CORPORATION AND TREVALI MINING (NEW
BRUNSWICK) LTD.

PETITIONERS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)
MADAM JUSTICE FITZPATRICK) August 19, 2022
)

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 19th day of August, 2022 (the "**Order Date**"); AND ON HEARING Peter L. Rubin and Peter Bychawski, counsel for the Petitioners, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the First Affidavit of Brendan Creaney, sworn August 19, 2022 (the "**Creaney Affidavit**") and the consent of FTI Consulting Canada Inc. to act as Monitor; AND on notice to the Bank of Nova Scotia, in its capacity as the RCF Administrative Agent (as defined in the Creaney Affidavit); AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the *British Columbia Supreme Court Civil Rules*, BC Reg 168/2009 and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

JURISDICTION

1. The Petitioners are companies to which the CCAA applies.

SUBSEQUENT HEARING DATE

2. The hearing of the Petitioners' application for an extension of the Stay Period (as defined in paragraph 16 of this Order) and for any ancillary relief shall be held at the Courthouse at 800 Smithe Street, Vancouver, British Columbia at ____:____.m. on _____, the ____ day of _____, 2022 or such other date as this Court may order.

PLAN OF ARRANGEMENT

3. The Petitioners shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

4. Subject to this Order and any further Order of this Court, the Petitioners shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"), and continue to carry on their business (the "**Business**") in the ordinary course and in a manner consistent with the preservation of the Business and the Property. The Petitioners shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

5. The Petitioners shall be entitled to continue to utilize the central cash management system currently in place as described in the Creaney Affidavit or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Petitioners of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Petitioners, pursuant to the terms of

the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. The Petitioners shall be entitled, but not required, to pay the following expenses which may have been incurred prior to the Order Date:

- (a) all outstanding wages, salaries, employee and pension benefits (including long and short-term disability payments), vacation pay and expenses (but excluding severance pay) payable before or after the Order Date, in each case incurred in the ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively "**Wages**");
- (b) the fees and disbursements of any Assistants retained or employed by the Petitioners which are related to the Petitioners' restructuring, at their standard rates and charges, including payment of the fees and disbursements of legal counsel retained by the Petitioners, whenever and wherever incurred, in respect of:
 - (i) these proceedings or any other similar proceedings in other jurisdictions in which the Petitioners or any subsidiaries or affiliated companies of the Petitioners are domiciled;
 - (ii) any litigation in which the Petitioners are named as a party or is otherwise involved, whether commenced before or after the Order Date; and
 - (iii) any related corporate matters; and
- (c) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Petitioners prior to the date of this Order by third party suppliers up to a maximum amount of \$1,000,000, if, in the opinion of the Monitor:

- (i) the supplier or service provider is critical to the Business and ongoing operations of the Petitioners and the payment is required to ensure ongoing supply;
- (ii) making such payment will preserve, protect or enhance the value of the Property or the Business; or
- (iii) making such payment is required to address any environmental concerns.

7. Except as otherwise provided herein, the Petitioners shall be entitled to pay all expenses reasonably incurred by the Petitioners in carrying on the Business in the ordinary course following the Order Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably incurred and which are necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services, provided that any capital expenditure exceeding \$250,000 shall be approved by the Monitor;
- (b) all obligations incurred by the Petitioners after the Order Date, including without limitation, with respect to goods and services actually supplied to the Petitioners following the Order Date (including those under purchase orders outstanding at the Order Date but excluding any interest on the Petitioners' obligations incurred prior to the Order Date); and
- (c) fees and disbursements of the kind referred to in paragraph 6(b) which may be incurred after the Order Date.

8. The Petitioners are authorized to remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from Wages, including, without limitation, amounts in respect of (i)

employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;

- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Petitioners in connection with the sale of goods and services by the Petitioners, but only where such Sales Taxes accrue or are collected after the Order Date, or where such Sales Taxes accrued or were collected prior to the Order Date but not required to be remitted until on or after the Order Date; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal property taxes, municipal business taxes or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors.

9. Until such time as a real property lease is disclaimed in accordance with the CCAA, the Petitioners shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated between the Petitioners and the landlord from time to time ("**Rent**"), for the period commencing from and including the Order Date, twice-monthly in equal payments on the first and fifteenth day of the month in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the Order Date shall also be paid.

10. Except as specifically permitted herein, the Petitioners are hereby directed, until further Order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Petitioners to any of their creditors as of the Order Date except as authorized by this Order, provided, however, that the Petitioners are authorized to pay the fees and disbursements of any Assistants retained or

employed by the RCF Administrative Agent under the Petitioner's senior secured revolving credit facility dated as of August 6, 2020, amended (the "**RC Facility**");

- (b) to make no payments in respect of any financing leases which create security interests;
- (c) to grant no security interests, trust, mortgages, liens, charges or encumbrances upon or in respect of any of their Property, nor become a guarantor or surety, nor otherwise become liable in any manner with respect to any other person or entity except as authorized by this Order;
- (d) to not grant credit except in the ordinary course of the Business only to its customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by the Petitioners to such customers as of the Order Date; and
- (e) to not incur liabilities except in the ordinary course of Business.

11. The Petitioners are, with the consent of the Monitor, authorized to continue on and after the date of this Order, to: (a) enter into transactions, including, without limitation intercompany funding transactions among the Petitioners and their subsidiaries, (b) buy and sell goods and services, including, without limitation, head office and shared services; and (c) allocate to, collect from and pay costs, expenses and other amounts of each other and their subsidiaries (collectively, the "**Intercompany Transactions**") in the ordinary course of business. All ordinary course Intercompany Transactions shall continue on terms consistent with existing arrangements or past practice, subject to such changes thereto, or to such governing principles, policies or procedures that the Monitor approves, or subject to further Order of this Court. Either Petitioner making an advance approved by the Monitor from and after the date of this Order with respect to intercompany funding to the other Petitioner (collectively, the "**Intercompany Advances**") shall be entitled to the benefit of and is hereby granted a charge and security as against the applicable Property of such Petitioner receiving such Intercompany Advance (the "**Intercompany Advances Charge**"), which shall have the priority set out in paragraphs 35 and 37 of this Order.

RESTRUCTURING

12. Subject to such requirements as are imposed by the CCAA, the Petitioners shall have the right to:

- (a) permanently or temporarily cease, downsize or shut down all or any part of their Business or operations and commence marketing efforts in respect of any of their redundant or non-material assets and to dispose of redundant or non-material assets not exceeding \$500,000 in any one transaction or \$2,000,000 in the aggregate;
- (b) terminate the employment of such of their employees or temporarily or indefinitely lay off such of their employees as it deems appropriate, and Trevali Mining (New Brunswick) Ltd. is authorized to make severance and termination payments to those of its employees whose employment is terminated during these CCAA proceedings (the "**Authorized Termination Payments**"); and
- (c) pursue all avenues of refinancing for their Business or Property, in whole or part;
- (d) all of the foregoing to permit the Petitioners to proceed with an orderly restructuring of the Business (the "**Restructuring**").

13. The Petitioners shall provide each of the relevant landlords with notice of the Petitioners' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Petitioners' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors who claim a security interest in the fixtures, such landlord and the Petitioners, or by further Order of this Court upon application by the Petitioners, the landlord or the applicable secured creditors on at least two (2) clear days' notice to the other parties. If the Petitioners disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any dispute concerning such fixtures (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Petitioners' claim to the fixtures in dispute.

14. If a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then: (a) during the period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours on giving the Petitioners and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer, the landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims the landlord may have against the Petitioners, or any other rights the landlord might have, in respect of such lease or leased premises and the landlord shall be entitled to notify the Petitioners of the basis on which it is taking possession and gain possession of and re-lease such leased premises to any third party or parties on such terms as the landlord considers advisable, provided that nothing herein shall relieve the landlord of its obligation to mitigate any damages claimed in connection therewith.

15. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, as applicable (the "**Relevant Enactment**"), the Petitioners, in the course of these proceedings, are permitted to, and hereby shall, disclose personal information of identifiable individuals in its possession or control to stakeholders, their advisors, prospective investors, financiers, buyers or strategic partners (collectively, "**Third Parties**"), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with the Petitioners binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall return the personal information to the Petitioners or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioners.

STAY OF PROCEEDINGS, RIGHTS AND REMEDIES

16. Until and including August ____, 2022, or such later date as this Court may order (the “**Stay Period**”), no action, suit or proceeding in any court or tribunal (each, a “**Proceeding**”) against or in respect of the Petitioners or the Monitor, or affecting the Business or the Property, shall be commenced or continued except with the written consent of the Petitioners and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Petitioners or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

17. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Petitioners or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Petitioners and the Monitor or leave of this Court.

18. Nothing in this Order, including paragraphs 16 and 17, shall: (i) empower the Petitioners to carry on any business which the Petitioners are not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Petitioners.

NO INTERFERENCE WITH RIGHTS

19. During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioners, except with the written consent of the Petitioners and the Monitor or leave of this Court.

CONTINUATION OF SERVICES

20. During the Stay Period, all Persons having oral or written agreements with the Petitioners or mandates under an enactment for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Petitioners, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Petitioners, and that the Petitioners shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Order Date are paid by the Petitioners in accordance with normal payment practices of the Petitioners or such other practices as may be agreed upon by the supplier or service provider and the Petitioners and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

21. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Order Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Petitioners on or after the Order Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

22. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors or officers of the Petitioners with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Petitioners whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Petitioners, if one is filed, is sanctioned by this Court or is refused by the creditors of the Petitioners or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director or officer of the Petitioners that might otherwise be barred

or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such Proceeding except for service of the initiating documentation on the applicable director or officer.

DIRECTORS AND OFFICERS INDEMNIFICATION AND CHARGE

23. The Petitioners shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Petitioners after the commencement of the within proceedings, except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

24. The directors and officers of the Petitioners shall be entitled to the benefit of and are hereby granted a charge (the "**D&O Charge**") on the Property, which charge shall not exceed an aggregate amount of \$2,000,000, as security for the indemnity provided in paragraph 23 of this Order. The D&O Charge shall have the priority set out in paragraphs 35 and 37 herein. The amount of the D&O Charge shall be reduced by the amount of any Authorized Termination Payments made pursuant to this Order; provided, however, that the amount of the D&O Charge shall not be reduced on account of Authorized Termination Payments by more than \$1,000,000.

25. Notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge, and (b) the Petitioners' directors and officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 23 of this Order.

APPOINTMENT OF MONITOR

26. FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Petitioners with the powers and obligations set out in the CCAA or set forth herein, and that the Petitioners and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Petitioners pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

27. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Petitioners' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Petitioners, to the extent required by the Petitioners, in their dissemination to the RCF Administrative Agent, and its Assistants, financial and other information as agreed to between the Petitioners and the Agent which may be used in these proceedings including reporting on a basis to be agreed with the RCF Administrative Agent and, without limiting the foregoing, the information and reporting requirements as provided for the RC Facility;
- (d) advise the Petitioners in their preparation of the Petitioners' cash flow statements and reporting as reasonably required by the RCF Administrative Agent;
- (e) advise the Petitioners in their development of the Plan and any amendments to the Plan;
- (f) assist the Petitioners, to the extent required by the Petitioners, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Petitioners, to the extent that is necessary to adequately assess the Petitioners' business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and

- (i) perform such other duties as are required by this Order or by this Court from time to time.

28. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, and nothing in this Order shall be construed as resulting in the Monitor being an employer or a successor employer, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

29. Nothing herein contained shall require or allow the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, 1999, S.C. 1999, c. 33 and the *Fisheries Act*, R.S.C. 1985, c. F-14 (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. For greater certainty, the Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

30. The Monitor shall provide any creditor of the Petitioners with information provided by the Petitioners in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Petitioners is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Petitioners may agree.

31. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the rights and protections afforded the Monitor by the CCAA or any applicable legislation.

ADMINISTRATION CHARGE

32. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Petitioners as part of the cost of these proceedings. The Petitioners are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Petitioners on a periodic basis and, in addition, the retainers paid or to be paid by Petitioners to the Monitor, counsel to the Monitor, and counsel to the Petitioners, are hereby authorized in the amounts of \$150,000, \$50,000 and \$200,000 respectively to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

33. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the British Columbia Supreme Court who may determine the manner in which such accounts are to be passed, including by hearing the matter on a summary basis or referring the matter to a Registrar of this Court.

34. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order which are related to the Petitioners' restructuring. The Administration Charge shall have the priority set out in paragraphs 35 and 37 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

35. The priorities of the Administration Charge, the D&O Charge, and the Intercompany Advances Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$500,000);

Second – D&O Charge (to the maximum amount of \$2,000,000); and

Third - Intercompany Advances Charge.

36. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge, the D&O Charge, and the Intercompany Advances Charge (collectively, the “**Charges**”) shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.

37. Each of the Charges shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”), in favour of any Person, save and except those claims contemplated by section 11.8(8) of the CCAA.

38. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioners shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Petitioners obtains the prior written consent of the Monitor, and the beneficiaries of the applicable Charges sought to be primed.

39. The Administration Charge, the Director’s Charge and the Intercompany Advances Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (“**BIA**”), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement

(collectively, an “**Agreement**”) which binds the Petitioners; and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Petitioners of any Agreement to which they are a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Petitioners pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

40. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Petitioners’ interest in such real property leases.

ALLOCATION

41. Any interested Person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Administration Charge and the D&O Charge amongst the various assets comprising the Property.

SERVICE AND NOTICE

42. The Monitor shall (i) without delay, publish in The Globe and Mail and The Northern Miner a notice containing the information prescribed under the CCAA, (ii) within five days after Order Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Petitioners of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

43. The Petitioners and the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Petitioners' creditors or other interested parties at their respective addresses as last shown on the records of the Petitioners and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

44. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the "**Service List**") to be maintained by the Monitor. The Monitor shall post and maintain an up to date form of the Service List on its website at: <http://cfcanada.fticonsulting.com/trevali> (the "**Website**").

45. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on the Website.

46. Notwithstanding paragraphs 43 and 45 of this Order, service of the Petition, the Notice of Hearing of Petition, any affidavits filed in support of the Petition and this Order shall be made on the Federal, British Columbia and New Brunswick Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal Crown, the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown, and the *Proceedings Against the Crown Act*, R.S.N.B. 1973, c. P-18 in respect of the New Brunswick Crown.

GENERAL

47. The Petitioners or the Monitor may from time to time apply to this Court for directions in the discharge of their powers and duties hereunder.

48. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Petitioners, the Business or the Property.

49. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, Burkina Faso and Namibia to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

50. Each of the Petitioners and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of the Petitioners.

51. The Petitioners may (subject to the provisions of the CCAA and the BIA) at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if and when the Petitioners determine that such a filing is appropriate.

52. The Petitioners are hereby at liberty to apply for such further interim or interlocutory relief as they deem advisable within the time limited for Persons to file and serve Responses to the Petition.

53. Leave is hereby granted to hear any application in these proceedings on two (2) clear days' notice after delivery to all parties on the Service List of such Notice of Application and all affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.

54. Any interested party (including the Petitioners and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List and to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

55. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.

56. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Peter L. Rubin
Lawyer for the Petitioners

BY THE COURT

REGISTRAR

Schedule "A"

COUNSEL NAME	PARTY REPRESENTED
John Sandrelli	FTI Consulting Canada Inc., the proposed Monitor
Stuart Brotman	Bank of Nova Scotia, in its capacity as RCF Administrative Agent